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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 97-81
Regarding Multiple Address Systems	)	

To: The Commission

REPLY COMMENTS OF METROCALL, INC.

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Date: May 16, 1997

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SUMMARY

Metrocall urges the Commission to clarify its definitions of "subscriber-based" and "private, internal" services. In particular, Metrocall submits that MAS paging links are "private" uses, since signals are not transmitted directly to subscribers over control link frequencies.

Metrocall supports those commenters who argue against dismissal of the pending 932/941 MHz applications. Those pre-July 26, 1993 applicants are legally entitled under the Act to have their applications processed and lotteried. Moreover, those applicants were cut-off as of the close of the filing windows in 1992; the FCC is not free to ignore the judicially-recognized protections of cut-off status. If the Commission wishes to overlay geographic licenses on the 932/941 MHz frequencies, it will still be able to do so after the pending applications are processed.

Metrocall submits that the Commission should maintain the *status quo* for the 928/959 MHz and 928/952/956 MHz bands. The comments indicate that these bands are highly congested; it makes little sense to impose geographic licensing or other major service rules changes on frequency bands with such heavy incumbent usage.

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Metrocall, Inc. ("Metrocall"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Reply Comments in response to the Comments concerning Commission's Notice of Proposed Rule Making[1] ("NPRM") in the above-captioned proceeding.

I. Statement of Interest

Metrocall is one of the largest publicly traded paging companies in the nation (NASDAQ trading symbol: "MCLL"). Through its licensee-subsidiary, Metrocall USA, Inc., Metrocall provides commercial radio paging services throughout many areas of the United States. Through its corporate predecessors, Metrocall has provided paging services for more than a decade, and it continues to undergo tremendous growth. Metrocall's paging facilities serve the Northeast, Mid-Atlantic, Southeast, Southwest and West Coast, and it is in the process of expanding that network throughout other regions of the country through "new" applications and through acquisitions. Over its paging facilities, Metrocall currently serves more than two million subscribers, and is actively pursuing business plans to increase its customer base nationwide.

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[1] Notice of Proposed Rule Making, FCC 97-58 (released February 27, 1997). By Order, DA 97-839 (released April 18, 1997), the Commission extended the Comment deadline to May 1, 1997, and the Reply Comment deadline to May 16, 1997. Consequently, these Reply Comments are timely.

Metrocall USA is the licensee of a Part 22 Multiple Address System ("MAS") station under call sign KNKF794, on 928.9875 MHz; and two Private Operational Fixed Microwave ("POFM") MAS stations under call sign WNTV732, on 956.33125 MHz, and under call sign WPJA367, on 956.29375 MHz. These stations are used as internal control links for Metrocall's wide-area paging operations. Additionally, Metrocall, through its corporate predecessors, is an applicant for 46 MAS licenses in the 932/941 MHz band. As a licensee and applicant whose ability to obtain and use MAS frequencies for necessary control functions related to its wide-area paging systems will be affected by the rule changes proposed in the NPRM, Metrocall has standing as a party in interest to submit these Reply Comments.

II. Summary of the Comments.

A majority of commenters disagree with the FCC's conclusions regarding the prevalence of the provision of subscriber-based services in MAS. Fundamentally, there appears to be division among the commenters as to what constitutes a "subscriber-based" service or a "private, internal" service.

Paging commenters object to any characterization of internal control links as "subscriber-based" services subject to auction. See, Joint Comments of Airtouch Paging and Arch Communications ("Joint Paging Comments") at 3; Comments of ProNet, Inc. ("ProNet Comments") at 5. Similarly, alarm monitoring companies and other private entities, question the propriety of characterizing their operations as a "subscriber-based" service, since they do not sell MAS spectrum to subscribers, but use it to support their principal business. See, *e.g.*, Comments of Radscan, Inc. ("Radscan Comments"); Comments of CellNet Data Systems, Inc. ("CellNet Comments") at 5. Equipment companies, and companies providing MAS services on a private

carrier basis to utility companies, government entities, etc., also argue that their uses should be deemed "private, internal," or that "private carrier" services such as theirs should still be permitted on the 928/952/956 band. See Comments of Alligator Communications, Inc. ("Alligator Comments") at 2; ProNet Comments") at 5; Comments of Cooperative Power Association ("Coop Comments") at 3-4; Comments of GPM Gas Corp. ("GPM Comments") at 6-7.

Some utilities commenting in this proceeding, however, claim that alarm services and the like are "subscriber-based" services. See, *e.g.*, Comments of Washington Suburban Sanitation Commission ("WSSC Comments") at 8. Some of these commenters appear to deem any MAS facility licensed under Part 22 as providing a "subscriber-based" service. See, *e.g.*, Comments of Sensus Technologies, Inc. ("Sensus Comments") at 4.

Several commenters question how the FCC reached its conclusion that the primary use of MAS has shifted towards subscriber based services, and in particular, how it concluded that the pending 932/941 MHz band applications were intended to provide such services. See, *e.g.*, UTC Comments at 14-21; API Comments at 12-13. Commenters note that the FCC reached a contrary conclusion about MAS in its 1994 Competitive Bidding Order.[2] See, *e.g.*, API Comments at 17. The FCC there found that MAS was predominantly used for private, internal purposes; as ProNet notes, the FCC also declined to apply auction procedures to intermediate links. See ProNet Comments at 5. With regard to the 932/941 MHz band, no new applications have been filed since 1992; commenters question how the FCC reached a different conclusion in the NPRM than

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[2] *Implementation of Section 309(j) of the Communications Act*, Second Report and Order in PP Docket No. 93-253, FCC 94-61 (released April 20, 1994).

it did in 1994. See, *e.g.*, Joint Paging Comments at 3-4. Several commenters also state that, according to the FCC's staff, most of the paper copies of the 1992 MAS applications were destroyed in the flood at Gettysburg in the summer of 1996, and the database records give only basic information such as applicant name, address, and file number. See, *e.g.*, UTC Comments at 19-20. Those commenters question what sort of review the FCC has conducted in reaching its conclusion that 95% of the pending 932/941 MHz applications propose subscriber-based services. Id.

There is strong support among the utility companies (and some support from equipment manufacturers and consulting engineers) for restricting the 928/952/956 MHz bands for private use. However, as noted, there is some disagreement as to what is a "private" use. See, *e.g.*, Comments of American Water Works Assoc'n ("AAWA Comments") at 6; GPM Comments at 6-7; Joint Paging Comments at 3. The majority of commenters would grandfather any existing "subscriber based" use of these bands; however, a few utilities suggest that non-"private" operators relocate to other spectrum. See AAWA Comments at 6; WSSC Comments at 8. Those commenters tend to define "private" very narrowly, to include only governmental and quasi-governmental users. Id. Alarm companies and private carriers support continued "mixed" use of the band. See, *e.g.*, Radscan Comments at 5.

Most of the commenters addressing the issue oppose reallocating the 928/959 bands to purely "subscriber-based" services. See, *e.g.*, Comments of Affiliated American Railroads ("AAR Comments") at 1.

Paging companies, and others who applied during 1992 filing windows, object to any reallocation of the 932/941 MHz frequencies and to dismissal of the pending applications. See,

e.g., Joint Paging Comments at 5, 7; Radscan Comments at 15; ProNet Comments at 8; Comments of Alarm Industry Communications Committee ("AICC Comments") at 2. Paging companies in particular note the shortage of adequate spectrum for control links in many markets. See Joint Paging Comments at 7; ProNet Comments at 5-6. The 1992 applicants commenting in this proceeding generally raise one or more of the following arguments: (i) the FCC does not have auction authority for these pre-July 26, 1993 applications; (ii) equity requires the FCC to complete processing and hold lotteries for these applications; (iii) if the FCC holds auctions for these frequencies, the initial auction should be limited to those who filed in the 1992 windows; and (iv) if the FCC dismisses these applications, fairness dictates that it refund the filing fees, which may total over $7.75 million. See, e.g., Fisher, Wayland Comments at 10; API Comments at 26; Joint Paging Comments at 7; Comments for Coalition for Equitable MAS ("MAS Coalition") at 9. See, also, 47 C.F.R. § 1.1113(a)(4).

A number of commenters, particularly utilities and other "private" entities, support dismissal of the pending 932/941 MHz applications, or express no strong opinion concerning the FCC's disposition of those applications (and characterize those applications as "speculative"). See Comments of American Petroleum Institute ("API Comments") at 26; Comments of Microwave Data Systems ("MDS Comments") at 15. Several of those commenters request that at least some of the 932/941 MHz spectrum be reallocated to "private" users. See API Comments at 10; Sensus Comments at 3. Most of those commenters agree with designating five of the 40 channels in those bands for Federal government/public safety use; others argue that more channels are needed. See API Comments at 25; AWWA Comments at 2; APCO Comments at 2. Some would leave as few as 10 of the 40 channels for "commercial" users. See MDS Comments

at 6.

Commenters uniformly oppose geographic licensing for the 928/952/956 MHz band. See, *e.g.*, Comments of Wells Rural Electric ("Wells Comments") at 3-4; Comments of the Public Service Commission of New Mexico ("NMPSC Comments") at 2; MDS Comments at 8-10. Utilities and other internal system operators note that the needs of internal systems, remote monitoring and meter reading by utilities, and like services, do not conform neatly to Economic Area ("EA") or other artificial boundaries. Because system design is so specialized, over small or irregular areas, commenters argue that site-specific licensing is more efficient, in that it allows licensees to cover only the areas they need, and leave the frequency available for others in nearby areas. See, *e.g.*, Alligator Comments at 5; MDS Comments at 10; AAR Comments at 3-4. Private carriers note the congestion on these frequencies, and state that the current usage of these frequencies makes them unsuitable for wide-area licensing (and auctions). See, *e.g.*, API Comments at 30-35. Radscan, however, proposes allowing incumbents to convert to EA licenses. See Radscan Comments at 18-21.

Most commenters addressing the 928/959 MHz band oppose geographic area licensing for those frequencies. See Comments of Southern California Consolidated Edison ("SCCE Comments") at 3; CellNet Comments at 22; MDS Comments at 12.

Those commenters who filed applications during the 932/941 MHz band urge the Commission process their applications, by lottery, for the applied-for sites. See Joint Paging Comments at 6; ProNet Comments at 2; Fisher Comments at 2-6; AICC Comments at 4. Some commenters do not object to some of the 932/941 MHz channels being auctioned on an EA basis, although they propose reserving some of these channels for "private" use on site-specific

basis. See, *e.g.*, GTech Comments at 8; MDS Comments at 6. Some commenters propose site-specific licensing even for "subscriber-based" uses of these frequencies, to avoid warehousing, prevent interference, and allow for greater opportunities for entry by "private" users. See, *e.g.*, UTC Comments at 27. Commenters addressing the issue of regional or nationwide licenses on any MAS frequencies oppose those proposals. See, *e.g.*, MDS Comments at 10-11.

Several commenters express strong objection to co-primary mobile or point-to-point operations on MAS frequencies. See, *e.g.*, AICC Comments at 5. Some commenters would permit point-to-point operations. See, *e.g.*, AWWA Comments at 5; Itron Comments at 5. One commenter would permit mobile operations, as long as those operations are not interconnected to the public switched telephone network. See CellNet Comments at 32.

If geographic licensing is adopted, most commenters addressing the issue want more stringent coverage and construction requirements than proposed. See ProNet Comments at 8; CellNet Comments at 31. Indeed, several commenters fault the FCC for a lack of enforcement of current MAS construction rules, resulting in a shortage of MAS spectrum available for licensing. See API Comments at 8-9; CellNet Comments at 6-7. One notable exception would allow "private" licensees an indefinite build out period. See Comments of East Bay Municipal Utility District (" EBMUD Comments") at 7.

Few commenters address the FCC's proposals concerning the appropriate bandwidth of each MAS channel, the necessity for channel aggregation limits (or "spectrum caps"), and the propriety of allowing licensees to aggregate contiguous MAS channels to create channels of larger bandwidth. Those that comment on channel size generally support bandwidths no larger than the current 12.5 kHz channelization. See, *e.g.*, Alligator Comments at 3; MDS Comments

at 4. Commenters addressing the proposal generally agree that licensees should be permitted to aggregate contiguous channels. See, *e.g.*, WSSC Comments at 4. Some of those commenters support an overall spectrum cap on MAS frequencies; others would require a showing of need before obtaining more than one 12.5 kHz channel pair. See, *e.g.*, id..

The FCC's partitioning and disaggregation proposals also received little comment; the few addressing these issues do so briefly, and do not object to them. See, *e.g.*, CellNet Comments at 29. Some commenters do note, however, that they do not believe that partitioning and disaggregation will be sufficient to allow small businesses or governmental entities access to needed spectrum if the FCC adopts geographic licensing and auction rules for MAS. See AICC Comments at 4.

Those commenters addressing the auction issues raised by the NPRM generally state that, if auctions are used for MAS (which many of them oppose), the general auction rules of Part 1 should apply. See, *e.g.*, CellNet Comments at 33. The Rural Telecom Group suggests that special bidding provisions be adopted for rural telephone companies. See Rural Telecom Group Comments at 6-7. Compu-Dawn submitted its comments in WT Docket No. 97-82 in this docket; those comments propose bidding credits and other such provisions for public safety organizations, or those carriers that propose to serve predominantly such organizations. See Compu-Dawn Comments. CellNet expresses concern that the Commission not adopt a definition of "small business" which would allow large companies to obtain such benefits. See CellNet Comments at 33. GTech suggests that the 932/941 MHz frequencies be auctioned, and that entities proposing private, internal use be permitted to participate in the auction, with the benefit of bidding credits and installment payment options. See GTech Comments at 8.

III. The Commission Should Adopt Clear Definitions of "Subscriber-Based" and "Private" Services.

The comments indicate differing views as to what constitutes a "subscriber-based" service, and what constitutes a "private, internal" service. Before the Commission even considers reallocating the various MAS bands to one type of service or the other, it should define its terms.

Metrocall suggests that, since the Commission is clearly planning to auction future licenses for any "subscriber-based" MAS services, the language of the Act provides the appropriate definition of those services. Section 309(j)(2)(A) provides that the Commission may award licenses by competitive bidding if "the principal use of *such* spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation directly from subscribers in return for which the licensee - (i) enables those subscribers to receive communications signals that are *transmitted utilizing frequencies that the licensee is licensed to operate*; or (ii) enables those subscribers to directly transmit communications signals *utilizing frequencies that the licensee is licensed to operate*[.]" See 47 U.S.C. § 309(j)(2)(A) (emphasis added). The Act contemplates that the frequencies being auctioned will be used to provide communications services directly to subscribers; put another way, those frequencies and the ability to communicate over them, must be the "service" for which the licensee receives compensation from subscribers.

In accordance with the express language of the Act, MAS paging "links" should be characterized as private, internal uses. As the paging companies commenting in this proceeding noted, link stations do not communicate directly with subscribers; rather, they activate and control the licensees' base stations. See Joint Paging Comments at 4-5; ProNet Comments at 5.

The actual service for which the paging licensee receives compensation from subscribers is provided over its base station frequenc(y)(ies). With regard to their use of links, paging companies are no different than any other company that uses spectrum for internal, automatic control of its equipment. Paging companies are not providing a "subscriber-based" service over link frequencies, as that term is defined in the Act.

Further explanation is warranted regarding how the FCC decided that 95% of the pending 932/941 MHz applications proposed subscriber-based services: neither the FCC Form 401 nor the FCC Form 402 specifically requested this information. As the paging commenters note, the common carrier 932/941 MHz applications were filed predominately (overwhelmingly) by paging companies for use as link frequencies. A number of the "private radio" commenters cite to applications they or others filed to provide traditional forms of internal communications, largely for utilities. Those companies that indicate they do sell MAS services to subscribers appear to have a very limited subscriber base (*e.g.*, providing communications services to utilities or governmental bodies), or are not traditional telecommunications services, in that the subscribers do not actually receive messages or data by way of the spectrum (*e.g.*, alarm services). Many of these services would not appear to meet the Act's definition of subscriber-based services.

IV. The Pending 932/941 MHz Applications Should Be Processed Prior to any Changes to the Service Rules for that Band.

A. The Act and Commission Precedent Require Processing of the Pending Applications

As various commenters point out, the pending 932/941 MHz applications have been on file for more than five years, and for more than a year prior to the passage of the

Omnibus Budget Reconciliation Act of 1993. See, *e.g.* Joint Paging Comments at 1; ProNet Comments at 1; Fisher, Wayland Comments at 1. Metrocall concurs with the arguments made by those commenters concerning the limits of the FCC's legal authority to retroactively apply its auction authority to applications accepted for filing before July 26, 1993. See id. Moreover, the Commission's decision here is directly contrary to prior decisions in which the Commission has held lotteries for pre-July 26, 1993 applications. See Memorandum Opinion & Order in PP Docket No. 93-253, 9 FCC Rcd. 7387 (1994); Report and Order in MM Docket No. 94-131 and PP Docket No. 93-253, 10 FCC Rcd. 9589, 9630-34 (1995). In support of its disparate treatment of pending MAS applicants, the Commission cites only the administrative inconvenience of processing so large a number of applications, and that applicants may need to "rethink" their applications in light of the rule changes proposed in the NPRM. See NPRM at ¶¶ 55-56. However, mere inconvenience is not a sufficient ground for failing to accord similarly situated applicants similar dispensations; such disparate treatment can be justified, if at all, only by reference to the purposes of the Act. See, *e.g.*, Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975), citing Melody Music, Inc. v. FCC, 345 F.2d 730, 732-33 (D.C. Cir. 1965).

Moreover, all of the applications filed during the 1992 filing windows achieved cut-off status at the close of those windows. See Public Notice, 6 FCC Rcd. 7242 (1991). Additionally, the 932/941 MHz applications filed under Part 22 of the Rules were accepted for filing in the fall of 1992, and have cleared the thirty-day statutory protest period. See, Public Notice (released November 19, 1992), attached to Joint Paging Comments.

Courts have consistently recognized the importance of adherence to the adopted cut-off rules, and the equities in favor of cut-off applicants. See, *e.g.*, McElroy Electronics Corporation

v. FCC, 86 F.3d 248, 257 (D.C.Cir. 1996) ("McElroy II") (timely filers have "an equitable interest in the enforcement of the cut-off rules" and the FCC "may not decline to enforce its deadlines so long as the rules themselves are clear and the public notice apprises potential competitors"); Florida Institute of Technology v. FCC, 952 F.2d 549, 554 (D.C.Cir. 1992) (cut-off applicants "certainly have an equitable interest [in that status] whose weight it is 'manifestly within the Commission's discretion to consider'") (citations omitted). See also, State of Oregon, 11 FCC Rcd. 1843, ¶ 11 (1996). Abiding by the cut-off rules serves the public interest in the expeditious initiation of service, as well as the private interests of those applicants who undertake the effort and expense of diligently preparing and filing their applications. See e.g., Florida Institute of Technology, 952 F.2d at 554 (noting that "diligent applicants have a legitimate expectation that the cut-off rules will be enforced" and that the "essential basis of the cut-off rules is...the public's interest in having broadcast licenses issued (and service provided) without undue delay").

In short, the parties who timely filed 932/941 MHz applications during the 1992 windows have legal and equitable rights that the Commission is not free to ignore. The pending 932/941 MHz applications should therefore be processed, in accordance with the Commission's procedures at the time those applications were filed.

B. Equitable Considerations Compel Processing of the 1992 Applications

The point raised by several commenters is well-taken: it is really no answer to a five-year processing delay, and the judicially-recognized rights of timely-filed, cut-off applicants, to say, as the Commission does at Paragraph 57 of the NPRM, that those applicants should have applied for other spectrum by now. As some parties who proposed internal use of MAS

frequencies point out, they did obtain other methods of meeting their communications needs - some of which are inferior to the MAS service for which they applied. See, *e.g.*, UTC Comments at 12.

More fundamentally, the applicants who timely filed in accordance with the FCC's properly-announced filing windows were, and are, entitled to administrative due process with regard to *those* applications, regardless of whether they have filed applications and received licenses for other spectrum. Cf. McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1358 (D.C. Cir. 1993) ("McElroy I") (noting that it does not mitigate harm to dismissed applicants that they could re-file; passage of time and changes in processing rules had detrimental affect on those applicants).[3]

Moreover, the FCC has not allocated additional control link spectrum in the intervening years since the applications were filed. Rather, it has been auctioning off additional base stations, placing ever-greater demands on the limited pool of control frequencies. It is, at best, cynical for this agency to blame legitimate users for their inability to obtain control frequencies.

C. The Adoption of Wide-Area Licensing and Auction Rules would not be Prejudiced by the Processing of Pending Applications

Perhaps something other than traditional MAS uses (control links, remote monitoring, etc.) could be provided over the 932/941 MHz frequencies, and perhaps EA, regional and/or

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[3] Metrocall further concurs with those commenters who suggest that, if the Commission does dismiss the pending applications, the applicants are legally and equitably entitled to a return of their filing fees. Indeed, Section 1.1113(a)(4) of the Commission's Rules provides that "the full amount of any fee submitted *will be* returned or refunded...[w]hen the Commission adopts new rules that nullify applications already accepted for filing[.]" See 47 C.F.R. § 1.1113(a)(4) (emphasis added). Metrocall does wish to point out, however, that applicants who filed for the 932/941 MHz frequencies under Part 22 of the rules paid $230.00 per application, not the POFM filing fee of $155.00.

nationwide licensing would be appropriate for those undisclosed services. Regardless of the service rules ultimately adopted in this proceeding, there are more equitable ways to achieve the Commission's goals than dismissing the long-pending applications.

If the FCC changes its service rules for the 932/941 MHz band, new EA licenses could simply be auctioned for the "white space" remaining after lotteries are held for the 1992 applications. Since the FCC is proposing flexible allocations for this band, it should not matter that the uses proposed in the 1992 applications might be "non-conforming" to whatever the new "overlay" licensees propose to do with this spectrum.

Moreover, since the FCC indicates that many of the 50,000 applications for the 932/941 MHz frequencies are mutually exclusive with one another, there will be far fewer than 50,000 license grants. Since each station is only entitled to (at most) a 90-mile co-channel distance separation, there will certainly be significantly more "white space" available for MAS geographic licensees than is available in other services on which the FCC has overlaid wide area licensing (*e.g.*, paging). It may also be relatively simple to narrow the field of 1992 applications to be processed: the FCC could issue a Public Notice giving those applicants thirty days within which to file a statement of continued interest in processing their applications; any applicant not responding would have its application dismissed for failure to prosecute.

If the FCC believes that the service rules it ultimately adopts are wholly incompatible with licensing the pending 932/941 MHz applications as filed, at a minimum, those applicants should be given an opportunity to amend their applications to propose a service complying with the new rules. Only those timely filing such an amendment would be eligible for the lottery. Cf., Florida Institute of Technology, *supra*, 952 F.2d at 552 (upholding FCC in allowing FM

applicants to amend their applications to conform to new rules and maintain cut-off status); Hispanic Information and Telecommunications Network v. FCC, 865 F.2d 1289, 1292 (D.C. Cir. 1989) (noting that the FCC provided "non-local" ITFS applicants with an opportunity to amend their ownership structure so as to qualify as "local" and remain eligible for licensing during the newly-adopted "local priority period").

Finally, if the FCC determines to hold an auction, it should limit the initial auction to parties who filed during the filing windows in 1992. Those applicants have been cut-off for five years, and potential competitors had full and fair notice of the applicable filing windows; late-coming potential competitors have no legal or equitable right to compete with those timely, cut-off applicants. See McElroy II, *supra*, 86 F.3d at 257.

V. The FCC Should Maintain the *Status Quo* in the 928/959 MHz and 928/952/956 MHz Bands.

The comments indicate that the 928/959 MHz band is heavily utilized by both common carrier and private radio licensees, even in remote areas. See, *e.g.*, UTC Comments at 10; API Comments at 9. Similarly, the comments indicate heavy congesting in the 928/952/956 MHz band; some commenters describe this band as nearly "saturated." See, *e.g.*, MDS Comments at 12. A number of commenters note the effectiveness of existing frequency coordination procedures and site-specific licensing in these bands. See, *e.g.*, API Comments at 30-31; Sensus Comments at 5.

It makes little sense to overlay geographic licensing on frequencies that are so congested, since it is unlikely that a viable wide-area service could be created in most EAs. Additionally, where both bands are so heavily used by parties providing a mix of internal, private carrier and common carrier services, arbitrarily limiting future licensing in these bands to one type of

service would appear to limit the flexibility of incumbents without providing any benefits for prospective new licensees. Consequently, Metrocall concurs with those commenters who support maintaining the *status quo* for these frequency bands.

If the Commission does adopt restricted eligibility for the 928/959 MHz and/or 928/952/956 MHz bands,[4] or adopts geographic licensing for either of these bands, it is imperative that incumbent licensees be fully protected in accordance with their existing technical parameters. See, *e.g.*, Personal Communications Industry Association Comments at 4-5; Delmarva Power and Light Comments at 6; ProNet Comments at 8. Metrocall concurs with those commenters who propose interference protection for incumbents based upon the incumbent's actual operating parameters. See ProNet Comments at 9-10; CellNet Comments at 11. Alternatively, incumbent operations, including control links, must be protected from harmful interference to no lesser degree than under the mileage separation criteria of the current rules.

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[4] For the reasons stated at Section III, *supra*, Metrocall respectfully submits that its 956 MHz POFM MAS stations are used for "private, internal" purposes. Should the Commission disagree with that interpretation, and restrict future licensing of commercial mobile radio "links" in the 956 MHz band, Metrocall urges the Commission to grandfather existing control link operations.

Conclusion

WHEREFORE, the foregoing premises considered, Metrocall respectfully requests that the Commission process the pending applications in the 932/941 MHz MAS band, and adopt rules for future MAS licensing consistent with the foregoing comments.

Respectfully submitted,

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May 16, 1997

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CERTIFICATE OF SERVICE

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 16th day of May, 1997, copies of the foregoing Reply Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

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